



3. Despite Australian Gold’s famous and well-known rights in its AUSTRALIAN GOLD® trademark and in its Australian Gold Koala Mark, Marq Labs recently introduced and began selling sunscreen products (“Infringing Products”) bearing a confusingly similar

AUSTRALIAN SANDS mark and a koala mark which is a direct imitation of Australian Gold's Koala Mark ("Marq Labs' Koala Mark").



4. These Infringing Products violate Australian Gold's rights in its AUSTRALIAN GOLD® trademark as well as the Australian Gold Koala Mark. This imitation of the koala image also violates Australian Gold's copyright rights. The combination and trade dress of the AUSTRALIAN SANDS mark with Marq Labs' Koala Mark is even more likely to cause consumer confusion.

5. A photograph of representative Infringing Products is reproduced below:



6. Thomas Kurnava is the “Director of Sales North and South America” for Marq Labs. Mr. Kurnava resigned from Australian Gold in October 2021 and immediately joined Marq Labs in October 2021. When he resigned, Mr. Kurnava was the National Account Executive for Australian Gold. His job responsibilities included managing Australian Gold’s U.S. Retail Sales team. In 2021, Mr. Kurnava was also responsible for sales in Latin America; South America; Mexico; the Caribbean; and Canada territory. Thus, Marq Labs is intimately familiar with Australian Gold’s AUSTRALIAN GOLD trademark name and the Australian Gold Koala Mark; the enormous goodwill they represent; the commercial magnetism of the marks; and the fame Australian Gold’s trademarks and copyrighted images have garnered over the years.

PARTIES

7. Plaintiff Australian Gold, LLC is a limited liability company organized and existing under the laws of the State of Indiana, having a principal place of business at 8001 Woodland Drive, Indianapolis, IN 46278.

8. Upon information and belief, Defendant Marq Group Holdings B.V. is a Netherlands private limited company having a principal place of business at 291 Edgewood St, Alexandria, TN 37012-2106.

9. Upon information and belief, Defendant Marque of Brands Americas, LLC d/b/a Marq Labs is a Tennessee private limited company having a principal place of business at 291 Edgewood St, Alexandria, TN 37012-2106.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction under the Trademark Act; 15 USC. §§ 1114, 1121, and 1125 (the “Lanham Act”); 17 USC § 501 (the “Copyright Act”); 28 USC §§ 1331 and 1338; and through the Court’s supplemental jurisdiction under 28 USC §§ 1367.

11. This Court has personal jurisdiction over Marq Group Holdings B.V. and Marque of Brands Americas, LLC because, on information and belief, (a) Marq Labs has marketed, distributed, offered for sale, and/or sold the Infringing Products to persons within the State of Tennessee; (b) Marq Labs regularly transacts and conducts business within the State of Tennessee; and/or (c) Marq Labs has otherwise made or established contacts within the State of Tennessee sufficient to permit the exercise of personal jurisdiction.

12. The Middle District of Tennessee is a proper venue pursuant to 28 USC § 1391(b) because Marq Labs is properly “at home” in this District and a substantial part of the acts or omissions giving rise to Australian Gold’s claims occurred in this District.

FACTUAL BACKGROUND

13. Australian Gold is currently, and for over 30 years has been, a world-leading manufacturer and distributor of cosmetic products, tanning products, skin care products and other related products. Australian Gold's products are sold in over 50 countries, including the United States, and the Australian Gold brand is recognized for its superior quality worldwide.

Australian Gold's Intellectual Property

14. Australian Gold started using the AUSTRALIAN GOLD mark as early as 1976. Australian Gold registered multiple iterations of the AUSTRALIAN GOLD trademark with the USPTO, bearing Registration Numbers 1,046,627; 3,959,245; 3,533,030; 1,637,325; and 2,062,813. Each of these registrations are incontestable. A copy of each Certificate of Registration for these marks is included as Exhibit A.

15. At least as early as 1992, Australian Gold began using its iconic Koala Mark to signify the quality and reputation of AUSTRALIAN GOLD® products. Australian Gold owns two U.S. federal trademark registrations on the Australian Gold Koala Mark, bearing Registration Numbers 6,154,571 and 1,754,778. The latter of which is incontestable. A copy of each Certificate of Registration is included as Exhibit B.

16. Since that time, Australian Gold has continuously used the AUSTRALIAN GOLD word mark alone and in combination with Australian Gold's Koala Mark in commerce and in connection with the sale of tanning products, skincare products, and other related products.

17. Australian Gold also has registered copyrights in the Australian Gold Koala Mark, bearing Registration Numbers VA 2-183-782 and VAu 1-379-423. Certificates of Registration for these copyrights are attached as Exhibit C.

Marq Labs' Infringement of Australian Gold's Intellectual Property

18. In blatant disregard of Australian Gold's rights, Marq Labs is manufacturing, producing, marketing, distributing, offering for sale, and selling in interstate commerce sunscreen products bearing an AUSTRALIAN SANDS trademark along with Marq Labs' Koala Mark.

19. Marq Group Holdings B.V. has applied for the registration of three trademarks with the USPTO – including an application for the mark AUSTRALIAN SANDS with serial number 79,354,272; an application for the Marq Labs Koala Mark with serial number 79,353,522; and an application for the combination of AUSTRALIAN SANDS and the Marq Labs Koala Mark with serial number 79,354,569. Copies of Marq Labs' trademark applications are included in Exhibit D.

20. Upon information and belief, Marque of Brands Americas, LLC d/b/a/ Marq Labs, under the control and/or authorization of Marq Group Holdings B.V., is using the AUSTRALIAN SANDS trademark and Marq Labs' Koala Mark, owned by Marq Group Holdings B.V., to make and sell the Infringing Products.

21. The Infringing Products are labelled with Marq Labs' name and address. See Exhibit E.

22. The AUSTRALIAN SANDS mark conveys the same commercial impression as the AUSTRALIAN GOLD® mark.

23. Marq Labs' Koala Mark logo conveys the same commercial impression as Australian Gold's Koala Mark.

24. Marq Labs and Australian Gold each sell sunscreen under their respective AUSTRALIAN SANDS and AUSTRALIAN GOLD trademarks.

25. Marq Labs' Infringing Products are in direct competition with Australian Gold's sunscreen and tanning products.

26. Marq Labs is offering the Infringing Products to the same consumers as Australian Gold's sunscreen and tanning products.

27. Marq Labs' Infringing Products are often displayed and sold next to or near Australian Gold's sunscreen and tanning products in retail stores

28. A representative image of Marq Labs' Infringing Products displayed at a Walmart store is depicted in Exhibit E.

29. Thomas Kurnava, the former National Account Executive for Australian Gold, has worked at Marq Labs since October 2021 as its Director of Sales North and South America.

30. Marq Labs had knowledge of the AUSTRALIAN GOLD® trademark and Australian Gold's Koala Mark when it began designing, manufacturing, distributing, marketing, promoting, offering for sale, and selling the Infringing Products.

31. Marq Labs intentionally adopted and is using a confusingly similar imitation of the AUSTRALIAN GOLD trademark and Australian Gold's Koala Mark knowing that the infringing mark and design would mislead and deceive consumers into believing that Marq Labs' Infringing Products were produced, authorized, or licensed by Australian Gold, or that they originated from Australian Gold.

32. The Infringing Products sold by Marq Labs are not manufactured by Australian Gold nor is Marq Labs associated, affiliated, or connected with Australian Gold.

33. Marq Labs is not licensed, authorized, sponsored, endorsed, or approved by Australian Gold in any way.

34. Australian Gold used its AUSTRALIAN GOLD® trademark and the Australian Gold Koala Mark extensively and continuously before Marq Labs began using the AUSTRALIAN SANDS mark and/or Marq Labs' Koala Mark.

35. The likelihood of confusion, mistake, and deception engendered by Marq Labs' infringement of the AUSTRALIAN GOLD® trademark and Australian Gold's Koala Mark is causing irreparable harm to the goodwill symbolized by the marks and the reputation for quality that they embody.

36. Marq Labs activities are likely to cause confusion before, during, and after the time of purchase because purchasers, prospective purchasers, and others viewing Marq Labs' Infringing Product at the point of sale are likely—due to Marq Labs' use of a confusingly similar imitation of the AUSTRALIAN GOLD® trademark and the Australian Gold Koala Mark. By causing a likelihood of confusion, mistake, and deception, Marq Labs is inflicting irreparable harm on the goodwill symbolized by the AUSTRALIAN GOLD® trademark and the Australian Gold Koala Mark and the reputation for quality that they embody.

37. Australian Gold has already received communications that actual confusion is occurring in the marketplace amongst these two brands.

38. Marq Labs' Koala Mark is substantially similar to Australian Gold's Koala Mark.

39. Marq Labs' Koala Mark is a derivative work based on Australian Gold's Koala Mark.

40. The trade dress of the Infringing Products, including but not limited to the stylization and placement of the AUSTRALIAN SANDS® mark and Marq Labs' Koala Mark mimics the trade dress of the Australian Gold products.

41. Marq Labs' use of the AUSTRALIAN SANDS® mark and Marq Labs' Koala Mark is a willful, knowing, intentional, and blatant attempt to take advantage of the goodwill of Australian Gold's trademarks and to confuse American consumers.

COUNT I
FEDERAL AND COMMON LAW INFRINGEMENT OF THE
AUSTRALIAN GOLD® MARK

42. Australian Gold repeats and incorporates by reference the allegations in the preceding paragraphs.

43. Marq Labs' AUSTRALIAN SANDS mark infringes Australian Gold's AUSTRALIAN GOLD® Mark.

44. Marq Labs use of a confusingly similar imitation of Australian Gold's AUSTRALIAN GOLD® Mark is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Marq Labs' goods are manufactured or distributed by Australian Gold, or are associated or connected with Australian Gold, or have the sponsorship, endorsement, or approval of Australian Gold.

45. Marq Labs' AUSTRALIAN SANDS mark is confusingly similar to Australian Gold's federally registered AUSTRALIAN GOLD trademark in violation of 15 USC § 1114 and the common law.

46. Marq Labs' activities are causing and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the trade and public, and, additionally, injury to Australian Gold's goodwill and reputation as symbolized by the AUSTRALIAN GOLD Mark, for which Australian Gold has no adequate remedy at law.

47. Marq Labs' actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with the AUSTRALIAN GOLD Mark to Australian Gold's irreparable harm.

48. Australian Gold's remedy at law is inadequate.

COUNT II
FEDERAL AND COMMON LAW INFRINGEMENT OF
AUSTRALIAN GOLD'S KOALA LOGO

49. Australian Gold repeats and incorporates by reference the allegations in the preceding paragraphs.

50. Marq Labs' Koala Mark infringes Australian Gold's Koala Mark.

51. Marq Labs' use of a confusingly similar imitation of Australian Gold's Koala Mark is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Marq Labs' goods are manufactured or distributed by Australian Gold, or are associated or connected with Australian Gold, or have the sponsorship, endorsement, or approval of Australian Gold.

52. Marq Labs' Koala Mark is confusingly similar to Australian Gold's Koala Mark in violation of 15 USC § 1114 and the common law.

53. Marq Labs' activities are causing and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the trade and public, and, additionally, injury to Australian Gold's goodwill and reputation as symbolized by Australian Gold's Koala Mark.

54. Marq Labs' actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Australian Gold's Koala Mark to Australian Gold's irreparable harm.

55. Australian Gold's remedy at law is inadequate.

COUNT III
UNFAIR COMPETITION AND TRADE DRESS INFRINGEMENT

56. Australian Gold repeats and incorporates by reference the allegations in the preceding paragraphs.

57. Australian Gold's trade dress is distinctive and well known.

58. The trade dress of Marq Labs' Infringing Products mimics the trade dress of Australian Gold's products.

59. Marq Labs' use in commerce of the AUSTRALIAN SANDS mark and Marq Labs' Koala Mark alone and in combination thereof are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Marq Labs with Australian Gold or as to the origin, sponsorship, or approval of Marq Labs' goods and commercial activities by Australian Gold.

60. Marq Labs' use in commerce of the AUSTRALIAN SANDS mark and Marq Labs' Koala Mark, alone and in combination thereof, in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of Marq Labs' Infringing Products.

61. Marq Labs has infringed Australian Gold's trade dress and has made false representations, false descriptions, and false designations of origin, on or in connection with its goods in violation of 15 USC § 1125(a).

62. Marq Labs' activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the trade and public, and, additionally, injury to Australian Gold's goodwill and reputation as symbolized by Australian Gold's trademarks and trade dress.

63. Marq Labs' actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Australian Gold's trademark and trade dress to the irreparable injury of Australian Gold.

64. Australian Gold's remedy at law is inadequate.

COUNT IV
COPYRIGHT INFRINGEMENT

65. Australian Gold repeats and incorporates by reference the allegations in the preceding paragraphs.

66. Australian Gold owns valid and subsisting copyright rights in the artwork and creative expression shown in its Koala Mark, including Copyright Registration Numbers VA 2-183-782 and VAu 1-379-423.

67. Marq Labs had knowledge of Australian Gold's Koala Mark prior to offering the Infringing Products for sale.

68. Marq Labs had access to Australian Gold's Koala Mark prior to offering the Infringing Products for sale.

69. Marq Labs' Koala Mark is substantially similar to Australian Gold's Koala Mark.

70. Marq Labs' Koala Mark is a derivative work of Australian Gold's Koala Mark.

71. Marq Labs unlawfully copied Australian Gold's Koala Mark without permission, and without license from Australian Gold.

72. Marq Labs' reproduction of Australian Gold's copyrighted Koala Mark is a violation of the copyright laws of the United States, specifically 17 USC §§ 106 and 501.

73. Marq Labs' copyright infringement was willful.

DEMAND FOR JURY TRIAL

Australian Gold demands a jury trial on all issues so triable.

PRAYER

A. Australian Gold requests that the Court enter judgment that Marq Labs' AUSTRALIAN SANDS trademark infringes Australian Gold's AUSTRALIAN GOLD® trademark.

B. Australian Gold requests that the Court enter judgment that Marq Labs' Koala Mark infringes Australian Gold's Koala Mark.

C. Australian Gold requests that the Court enter judgment that Marq Labs' use of the AUSTRALIAN SANDS trademark and the Marq Labs Koala Mark, alone and/or in combination, in Marq Labs' commercial advertising, marketing and/or promotion and sales in the United States constitutes and creates a likelihood of confusion, mistake or deception among relevant consumers and therefore constitutes unfair competition.

D. Australian Gold requests that the Court enter judgment that Marq Labs' use of AUSTRALIAN SANDS and Marq Labs' Koala Mark, alone or in combination, infringes Australian Gold's trade dress.

E. Australian Gold requests that the Court enter judgment that Marq Labs' Koala Mark infringes Australian Gold's copyright rights in Australian Gold's Koala Mark.

F. Australian Gold requests that the Court enter judgment that Marq Labs' trademark infringement, copyright infringement, trade dress infringement and unfair competition is willful and that Marq Labs had knowledge of its infringement.

G. Australian Gold requests that the Court award Australian Gold damages under 15 USC §§ 1114, 1117 and 17 USC § 504.

H. Australian Gold requests that the Court provide Australian Gold injunctive relief under 15 USC § 1116 and 17 USC § 502.

I. Australian Gold requests that the Court order the impoundment and destruction of Marq Labs' Infringing Products under 15 USC § 1118 and 17 USC § 503.

J. Australian Gold requests that the Court permanently enjoin Marq Labs, its officers, agents, employees and attorneys, and those in active concert or participation therewith, from using the AUSTRALIAN SANDS trademark and/or any trademark confusingly similar to Australian Gold's AUSTRALIAN GOLD trademark to advertise, offer for sale and/or sell any products or services, unless authorized by Australian Gold.

K. Australian Gold requests that the Court permanently enjoin Marq Labs, its officers, agents, employees and attorneys, and those in active concert or participation therewith, from using the Marq Labs' Koala Mark and/or any trademark confusingly similar to Australian Gold's Koala Trademark to advertise, offer for sale and/or sell any products or services, unless authorized by Australian Gold.

L. Australian Gold requests that the Court award Australian Gold actual damages in the form of: (1) Marq Labs' profits, (2) any damages sustained by Australian Gold, and (3) the costs of the action, in accordance with 15 USC § 1117.

M. Australian Gold requests that the Court award Australian Gold a sum above the amount found as actual damages up to three times the actual damages, in accordance with 15 USC § 1117.

N. Australian Gold requests that the Court find the case exceptional and award Australian Gold its attorneys' fees and expenses associated with this action, in accordance with 15 USC § 1117.

O. Australian Gold requests that the Court award Australian Gold Marq Labs' profits attributable to the infringement pursuant to 17 USC § 504.

P. Australian Gold requests that the Court award Australian Gold statutory damages to 17 USC § 504.

Q. Australian Gold requests that the Court award Australian Gold its costs and attorneys' fees pursuant to 17 USC § 504.

R. Australian Gold requests that the Court grant all such other relief that the Court deems just.

Respectfully submitted,

By: /s/ Brantley C. Rowlen

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